

[NOT YET SCHEDULED FOR ORAL ARGUMENT]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WOODHULL FREEDOM
FOUNDATION, et al.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA and
MERRICK B. GARLAND, in his
official capacity as Attorney General of
the United States,

Defendants-Appellees.

No. 22-5105

**CONSENT MOTION FOR 28-DAY EXTENSION OF THE TIME IN
WHICH TO FILE PRINCIPAL BRIEFS**

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27(h), Defendants-Appellees respectfully request a 28-day extension of time for filing the opening and responsive briefs in this matter. Plaintiffs-Appellants consent to the relief requested in this motion.

1. On June 29, 2022, this Court issued an order setting a briefing schedule for this appeal. Under that briefing schedule, the opening brief

is due August 8, 2022, the response brief is due September 7, 2022, and the reply brief is due September 28, 2022.

2. Defendants-Appellees respectfully request a 28-day extension of time for filing the opening brief and the response briefs. If this request is granted, the opening brief would be due Tuesday, September 6, 2022 (the previous day is Labor Day), the response brief would be due Wednesday, November 2, 2022, and the reply brief would be due the standard three weeks after the response brief on Wednesday, November 23 (the day before Thanksgiving).

3. The requested extension is necessary in light of the litigation deadlines and unavoidable personal constraints of the government attorney with principal responsibility for drafting the response brief in this matter, Mr. Joseph Busa. Mr. Busa is unable to work on the response brief in advance of receiving the opening brief under the current schedule because he is also principally responsible for drafting the government's response brief in *National Horsemen's Benevolent and Protective Association v. Black*, No. 22-10387 (5th Cir.), which is due July 27, 2022. From July 21 to August 7, Mr. Busa will be on a previously scheduled, long delayed, and nonrefundable family vacation

out of the country. And he will be out of cell and email service rafting a remote river in Alaska on a nonrefundable and previously scheduled trip from August 12 to 21. Upon his return, he is subject to a federal jury summons through September 12. Moreover, the Fifth Circuit has notified counsel that oral argument will be held in *National Horsemen's Benevolent and Protective Association v. Black*, No. 22-10387, on an expedited basis during the week of August 29. Mr. Busa is the principal attorney for the government responsible for preparing a supplemental brief dealing with a complex state-secrets issue in *Fazaga v. FBI*, No. 12-56867 (9th Cir.), due September 19, on one extension to accommodate Mr. Busa's vacation. And Mr. Busa is the principal government attorney tasked with preparing the response brief in *Oklahoma v. FTC*, No. 22-5487 (6th Cir.). That brief is currently due August 18 and a pending extension motion, if granted, would have the brief due October 17 (to accommodate Mr. Busa's vacation and other litigation deadlines upon his return from vacation).

4. An extension of the time in which to file the response brief in this case to November 2, 2022, should permit Mr. Busa to satisfy his other professional and personal obligations while also devoting

adequate time to briefing this matter. Rather than request a 56-day extension of time to file the response brief, Defendants-Appellees propose to split that time evenly between Plaintiffs-Appellants and Defendants-Appellees, with each side receiving a 28-day enlargement of the time in which to file the principal briefs.

5. Counsel for Plaintiffs-Appellants consent to the relief requested in this motion.

CONCLUSION

For the foregoing reasons, Defendants-Appellees respectfully request that this Court extend the time for filing the principal briefs by 28-days each, with the opening brief due Tuesday, September 6, 2022, the response brief due Wednesday, November 2, 2022, and the reply brief due Wednesday, November 23, 2022.

Respectfully submitted,

SCOTT R. MCINTOSH

/s/ **Joseph F. Busa**

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JULY 2022

CERTIFICATE OF SERVICE

I certify that on July 7, 2022, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Joseph F. Busa
JOSEPH F. BUSA
Counsel for Defendants-Appellees

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 598 words. This motion also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Century Schoolbook 14-point font, a proportionally spaced typeface.

/s/ Joseph F. Busa
JOSEPH F. BUSA
Counsel for Defendants-Appellees